

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	CASE NO. 1:16-cr-00295-CAB
	:	
Plaintiff,	:	JUDGE: BOYKO, C.
	:	
v.	:	
	:	
BRIAN K. STEPP, et al.	:	<u>MOTION REQUESTING PRIOR COURT</u>
	:	<u>APPROVAL PURSUANT TO FED. CRIM.</u>
	:	<u>RULE 17(C) FOR THE ISSUANCE OF A</u>
Defendants.	:	<u>SUBPOENA</u>
	:	

Now comes the Defendant, BRIAN K. STEPP, by and through his attorneys, and respectfully moves this Honorable court for prior judicial approval to order the issuance of a subpoena(s) pursuant to Federal Criminal Rule 17(C) with notice to AUSA Rebecca Lutzko as supported by the exhibits A, B and C attached hereto and to have the requested documents produced at the pretrial on April 17, 2017. AUSA Lutzko has been advised of the contents of the attached subpoenas both verbally and by e-mail. AUSA Lutzko advised that she had no objections to the attached subpoenas.

Respectfully submitted,

/s/James M. Kersey
James M. Kersey (0017785)
600 IMG Building
1360 East Ninth Street
Cleveland, OH 44114
(216) 241-3470

/s/Phillip J. Henry
Phillip Henry (0071222)
7530 Lucerne Drive, Suite 200
Middleburg Heights, OH 44130
(440) 243-2800

Attorneys for Defendant Brian K. Stepp

CERTIFICATE OF SERVICE

Now comes the undersigned and hereby certifies that a copy of the foregoing Motion Requesting Prior Court Approval Pursuant to Fed. Crim. Rule 17(C) for the Issuance of a Subpoena was sent by the electronic e-mail system of this court, to Rebecca Lutzko, Asst. United States Attorney, this 30th day of March, 2017.

/s/James M. Kersey
James. M. Kersey

/s/Phillip J. Henry
Phillip J. Henry

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

United States of America)

v.)

Brian K. Stepp) Case No. 1:16cr295

Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CRIMINAL CASE

To: Fifth Third Bank, Legal Operations Department, 5050 Kingsley Dr., MD 1MOC2Q, Cincinnati, Ohio 44263

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Attached Exhibit "A"

Place: Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 15B
Cleveland, Ohio 44113

Date and Time: 04/17/2017 2:00 pm

Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Brian K. Stepp, who requests this subpoena, are:

Phillip J. Henry, 7530 Lucerne Dr., Ste. 200, Middleburg Heights, Ohio, phenry@pmlawyers.com, 440-243-2800,

Notice to those who use this form to request a subpoena

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

Exhibit A

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case (Page 2)

Case No. 1:16cr295

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)

(c) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) Subpoena for Personal or Confidential Information About a Victim. After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) In the United States. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) In a Foreign Country. If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(g) Contempt. The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

EXHIBIT "A"

Please produce certified copies of any and all documents relating to any loan and/or line of credit in the name of Variety Contractors, Inc. from January 2014 to the present, including, but not limited to any application, correspondence, and financial document provided by Variety Contractors, Inc. In applying for or renewing any loan or line of credit.

Please produce certified copies statements for any account in the name of Variety Contractors, Inc. for December 2014.

VERIFICATION

STATE OF OHIO)
_____COUNTY) SS:

Now comes _____, Records Custodian for Fifth Third Bank
being duly sworn according to law and upon personal knowledge hereby states that attached
records of the acts, events, or conditions listed in the records were made at or near the time by, or
from information transmitted by a person with knowledge of the acts, events, and/or conditions.
The Records Custodian further states that these records are regularly conducted business activity,
and is the regular practice of Fifth Third Bank.

Sworn to before me and subscribed in my presence this ____ day of _____, 2017.

Notary Public

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

United States of America)

v.)

Brian K. Stepp) Case No. 1:16cr295

Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CRIMINAL CASE

To: BSB Partners, CPAs and Business Advisors, 6563 Wilson Mills Rd., Ste. 102, Mayfield Village, Ohio 44143

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Attached Exhibit "A"

Place: Carl B. Stokes United States Court House
801 West Superior Avenue, Courtroom 15B
Cleveland, Ohio 44113

Date and Time: 04/17/2017 2:00 pm

Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Brian K. Stepp
_____, who requests this subpoena, are:

Phillip J. Henry, 7530 Lucerne Dr., Ste. 200, Middleburg Heights, Ohio, phenry@pmlawyers.com, 440-243-2800,

Notice to those who use this form to request a subpoena

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

Exhibit B

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case (Page 2)

Case No. 1:16cr295

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)

(c) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) Subpoena for Personal or Confidential Information About a Victim. After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) In the United States. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) In a Foreign Country. If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(g) Contempt. The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

Exhibit A

Please produce certified copies of any and all documents relating to BSB Partners, CPAs and Business Advisors relating to their representation of Variety Contractors, Inc. for the year 2014, including, but not limited to any correspondence with Variety Contractors, Inc., any financial documents or reports provided by Variety Contractors, Inc., as well as any document prepared by BSB Partners, CPAs and Financial Advisors for Variety Contractors, Inc.

VERIFICATION

STATE OF OHIO)
_____ COUNTY) SS:

Now comes _____, Records Custodian for BSB Partners, CPAs and Business Advisors being duly sworn according to law and upon personal knowledge hereby states that attached records of the acts, events, or conditions listed in the records were made at or near the time by, or from information transmitted by a person with knowledge of the acts, events, and/or conditions. The Records Custodian further states that these records are regularly conducted business activity, and is the regular practice of BSB Partners, CPAs and Business Advisors.

Sworn to before me and subscribed in my presence this ____ day of _____, 2017.

Notary Public

AO 89B (07/16) Subpoena to Produce Documents, Information, or Objects in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

United States of America

v.

Brian K. Stepp

Defendant

Case No. 1:16cr295

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CRIMINAL CASE

To: Fedeli, Liptak & Keller, 4301 Darrow Rd., Ste. 2600, Stow, Ohio 44224

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Attached Exhibit "A"

Place: Carl B. Stokes United States Court House 801 West Superior Avenue, Courtroom 15B Cleveland, Ohio 44113	Date and Time: 04/17/2017 2:00 pm
---	-----------------------------------

Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Brian K. Stepp, who requests this subpoena, are:

Phillip J. Henry, 7530 Lucerne Dr., Ste. 200, Middleburg Heights, Ohio, phenry@pmlawyers.com, 440-243-2800,

Notice to those who use this form to request a subpoena

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

Exhibit C

Case No. 1:16cr295

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)

(c) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) Subpoena for Personal or Confidential Information About a Victim. After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) In the United States. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) In a Foreign Country. If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(g) Contempt. The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

Exhibit A

Please produce certified copies of any and all documents relating to Fedeli, Liptak & Keller's representation of Variety Contractors, Inc. for the year 2014, including, but not limited to any correspondence from Variety Contractors, Inc., any bond applications, any financial documents or reports provided by Variety Contractors, Inc., as well as any document prepared by Fedeli, Liptak & Keller for Variety Contractors, Inc.

VERIFICATION

STATE OF OHIO)
_____ COUNTY) SS:

Now comes _____, Records Custodian for Fedeli, Liptak & Keller
being duly sworn according to law and upon personal knowledge hereby states that attached
records of the acts, events, or conditions listed in the records were made at or near the time by, or
from information transmitted by a person with knowledge of the acts, events, and/or conditions.
The Records Custodian further states that these records are regularly conducted business activity,
and is the regular practice of Fedeli, Liptak & Keller.

Sworn to before me and subscribed in my presence this ____ day of _____, 2017.

Notary Public